



May 5, 2003

Via Electronic Mail

Office of the Secretary
United States Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Comments on Do-Not-Call Implementation Act as Part of the Telemarketing Proceeding (FCC 03-62) (Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991) CG Docket No. 02-278

Dear Ladies and Gentlemen:

On behalf of the Securities Industry Association (SIA)¹, we would like to present our views on the Federal Communications Commission's (FCC) request for comments regarding the matter referenced above.

Many of SIA's member firms rely heavily on telephone communication to identify new clients and to provide full and effective service to existing clients. We therefore have a strong interest in helping develop reasonable telemarketing rules, while avoiding rules which unduly restrict or impede legitimate business activity. SIA believes responsible telemarketing practices are in everyone's interest. Our member firms strive to develop long-term relationships with both prospective and existing clients. Respectful telemarketing practices help us achieve that goal.

Comment 1: The Securities Industry Calls for a Single National Do-Not-Call Registry

The FCC is seeking comments on whether to revisit the option of establishing a national do not call list, in light of the Federal Trade Commission (FTC) recently released order adopting its own national do-not-call registry and other amendments to its Telemarketing Sales Rules.² SIA understands the desire to curb unwanted telephone solicitations by unregulated operations. Therefore, we conclude that a single, comprehensive national do-not-call registry should be established since it would strike the appropriate balance for consumers who may wish to receive product and service information by telephone and for those who desire to curb unwanted telephone solicitations. By creating a single national do-not-call registry, the industry would be at full compliance in the least costly and most efficient means. Ultimately, this would benefit consumers who opt not to receive telephone contacts from our firms.

¹ The Securities Industry Association, established in 1972 through the merger of the Association of Stock Exchange Firms and the Investment Banker's Association, brings together the shared interests of more than 600 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs more than 700,000 individuals. Industry personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2002, the industry generated \$214 billion in U.S. revenue and \$285 billion in global revenues. (More information about SIA is available on its home page: www.sia.com.)

² See *Telemarketing Sales Rules, Final Rule*, Federal Trade Commission, 68 Fed. Reg. 4580 (Jan. 29, 2003).

- A National Do Not Call Registry Should Preempt Lists Created by Individual States

As the FCC has acknowledged, a number of states have passed or are considering legislation to establish state wide do not call lists. These state lists differ widely in methods for collecting data, the fee charges and the types of entities required to comply with their restrictions. This wide variation among state-sponsored lists makes compliance much more costly and difficult to manage.

While costs are difficult to estimate, at minimum, costs will rise as a result of the need to amend documents, and reprogram operations and systems. Costs and resources will be directed towards revising documents and procedures, modifying existing compliance systems, retraining firm personnel and hiring legal counsel to draft documents and seek relief from state agencies charged with enforcing these areas. As you know, in creating its national do-not-call registry, the FTC did not preempt the varying states' do-not-call lists. We believe the FCC has a stronger claim of preemptive authority to do so when establishing a national do-not-call registry and SIA urges the Commission to utilize its authority.

- Pre-existing Business Relationships

Telephone calls stemming from established business relationships as defined by the FTC would not violate a national do-not call registry and should not be considered by the FCC. First, it is imperative that our members retain the ability to contact persons with whom they have prior or existing business relationships. Suppose, for example, a margin call situation has developed in a customer's account. At this time, the broker should be able to call the customer to inform the him or her of the need to deposit additional cash or securities promptly to avoid the sale of securities to satisfy the margin call. However, without an exception for existing business relationships, the broker's call could be in violation of any "do-not-call" requirement. Likewise, a broker or representative often should initiate contact with customers to discuss changes in securities markets and the investment environment to enable them to consider and take timely appropriate action. Additionally, firms should be able to contact customers to review and discuss the reinvestment alternatives when certificates of deposit or bonds reach maturity. Further, we may need to contact our customers with pertinent financial news that might impact their investments as for example, a merger or reorganization announcement.

SIA strongly believes that the prior or existing business relationship exception should also extend from one affiliate to another if they are under the same corporate umbrella. Particularly in the financial services business, clients are often seeking to achieve a goal (*e.g.*, ample retirement or college savings) rather than to make a one-time investment. Appropriate opportunities to help clients reach their objectives might come from an affiliated entity rather than from the original contact.

- Safe Harbor Provisions

SIA also believes strongly that accidental calls should be treated differently from patterns or practices of violating telemarketing requirements that bespeak a lack of genuine efforts to comply. The safe harbor provisions we suggest would achieve protection against prosecution and should be included in the proposed FCC rules. Safe harbor provisions are needed components of any "do-not-call" statute. Any rule should specify that there is no violation of a national do-not-call registry resulting from an error if the telephone solicitor has maintained records and any information as required by the federal government and self-regulatory organizations (SROs), and has otherwise attempted to comply by establishing a do-not-call list, and implementing clear and written procedures and practices to prevent any violation.

- Maintenance of Records

If the FCC implements a national database, its record keeping or other rules should mirror those proposed by the FTC. As we have indicated before, the securities industry is required to maintain records and information regarding telephone sale solicitations, customer information, transaction records, and a whole host of other data as mandated by the federal and state rules and regulations and by the National Association of Securities Dealers (NASD).³

The regulatory framework just described combines other SEC and NASD rules that require us to maintain information about all current and former employees and all advertising, brochures, telemarketing scripts and promotional materials. Therefore, since we are already subject to record keeping requirements under the SEA, we urge the FCC to consider that fact when it is developing rules in this area.

Comment 2: Financial Services Industry Should Remain Exempted from Do-Not-Call Registry

While we are calling for a single national do-not-call registry to be established by the FCC in coordination with the FTC, such a registry should continue not to cover registered broker-dealers. The securities industry and its members are already subject to a panoply of federal, state and SRO requirements. For example, the FCC requires upfront identification of the caller and the reason for the call and limits the hours in which phone solicitations can be made⁴. In addition, the FCC, NASD, the New York Stock Exchange (NYSE) and the American Stock Exchange (AMEX) all require member firms to develop and maintain their own internal "do-not-call" lists⁵.

In addition, customer complaints about the content of the solicitation can be referred to the SEC, the relevant SRO, the appropriate State Securities Commissioner and/or the relevant State Attorney General. Each of these authorities possesses significant enforcement tools. This provides substantial protection to consumers considering purchasing investment opportunities over the telephone and provides strong incentives to firms to be fully compliant with existing laws. Since the FTC statute defers in this area to the SEC to establish rules for securities firms, we urge that FCC should do the same.

³ The Securities Exchange Act of 1934 (SEA) gives national securities exchanges and NASD the authority to make and enforce rules regarding broker-dealers. The Federal Government, through the National Securities Market Improvement Act of 1996 (NSMIA), expressly prohibits the states from establishing any "making and keeping records" requirements for broker-dealers that *differ from or are in addition to* the requirements in those areas established under SEA. In addition, the Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 required the SEC (rather than the Federal Trade Commission) to promulgate or cause the NASD to promulgate rules applicable to our industry regarding telemarketing. These rules have been promulgated by all of the national securities exchanges and NASD and the rules must (and do) include the requirements to maintain a list of persons, who upon contact, have asked not to be called again.

⁴ FCC Restrictions on Telephone Solicitation, 47 C.F.R. § 64.1200 (2001).

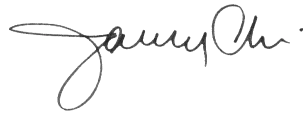
⁵ See NASD Rule 2110, N.Y.S.E. Rule 4401A, and Am. Stock. Ex. Rule 428(a).

Conclusion

For small, medium and large businesses, telephone communication attracts new customers and provides opportunities to strengthen relationship with existing customers. For consumers, telephone sales provide exposure and convenient access to a wide range of desired goods and services. Therefore, SIA respectfully urges you to consider the current regulatory environment under which the securities industry operates and to develop rules accordingly.

If your staff has any questions, please feel free to contact me at 212-720-0617. Again, thank you for consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read "James Y. Chin", with a stylized flourish at the end.

James Y. Chin
AVP, Director and Counsel
State Government Affairs
Staff Advisor, SIA Telemarketing Subcommittee